

June 12, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DEL RAY PROPERTIES, INC.,

Respondent,

v.

KIM M. ELLIOT,

Appellant.

No. 49969-0-II

UNPUBLISHED OPINION

SUTTON, J. — Kim M. Elliott appeals the superior court’s judgment in favor of Del Ray Properties for unpaid rent Elliott owed for space in Del Ray’s mobile home park. Elliott argues that the superior court erred by modifying its initial ruling in her favor because Del Ray failed to comply with CR 59’s 10-day deadline to file a motion to reconsider. And Elliott argues that the superior court’s finding of fact, that Del Ray failed to act in good faith in attempting to collect the unpaid rent and evict her, bars any judgment in Del Ray’s favor under the Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW. Finally, Elliott claims that as the prevailing party she is entitled to an award of reasonable attorney fees at trial and on appeal. Because the superior court had not entered written findings of fact, conclusions of law, and a final judgment related to its initial ruling in Elliot’s favor, the superior court did not err by modifying its initial ruling. The MHLTA’s requirement that a party act in good faith does not bar judgment in Del Ray’s favor. Therefore, we affirm the superior court’s judgment in favor of Del Ray.

FACTS

Elliot occupied a mobile home placed on a space in Del Ray's mobile home park. After a dispute arose over unpaid rent, Del Ray filed an unlawful detainer action to evict Elliott. Del Ray also alleged that Elliott was not a proper tenant of the mobile home park.

In December 2014, Del Ray obtained a default judgment in the amount of \$3,107.00 and a writ of restitution against Elliott. The superior court later vacated the judgment and quashed the writ of restitution. Del Ray then filed motion for summary judgment. In June 2015, the superior granted Del Ray's motion for summary judgment on the unlawful detainer action and issued another writ of restitution against Elliott. Finally, the superior court awarded Del Ray all unpaid rent owed by Elliott, awarded late fees, and awarded Del Ray reasonable attorney fees. Elliott filed a motion to reconsider and a motion to stay the writ of restitution. The superior court denied both motions.

Del Ray then filed a motion to amend the order granting summary judgment to include a specific amount of unpaid rent owed. Elliott responded that Del Ray had obtained the writ through fraud and that it had knowingly overstated the amount of unpaid rent due. Ultimately, the superior court ordered a trial on the amount of unpaid rent owed.

On March 22, 2016, following a bench trial, the superior court entered a written ruling in favor of Elliot (March 22 ruling). Regarding the unlawful detainer action and the superior court's summary judgment granted in Del Ray's favor, the superior court stated, in relevant part,

1. At the time the original summary judgment was granted, it appears that there was no past due rent upon which to enter that judgment.

....

3. Neither party appears to have complied with RCW 59.20.073 in any substantial way.

....

5. Allegations were made at the time of the summary judgment that in excess of \$9,000.00 was due, which at time of trial proved to be a false assertion. It would appear that the summary judgment was granted without factual basis.

....

Based upon the foregoing findings and analysis, the court is left with an eviction that likely should not have been granted.

The landlord [Del Ray] has acted throughout these proceedings in bad faith in contravention of RCW 59.20.010 which impacts its ability to pursue remedies under the chapter.

Restoration of the tenancy to the defendant [Elliott] is procedurally foreclosed, and under the circumstances would be a poor resolution.

The landlord [Del Ray] remains in possession of the tenant's [Elliott's] mobile home. It is unknown what the current condition of the mobile home is. No evidence was introduced to indicate the mobile home had declined in value from its purchase price of \$12,000 during the time prior to the eviction.

The tenant [Elliott] has lost the use and enjoyment of that property for approximately 10 months. It is unknown if the tenant has incurred additional rental expenses. The court will need documentation of any rental expense incurred by the tenant [Elliott] that would be in excess of the \$415.00 per month.

....

The court will entertain briefs from the parties as to what, if any, credit against the judgment the landlord [Del Ray] may be entitled to for storage. The court will also consider whether any credit should be offset by the tenant's [Elliott's] loss of use.

As the Defendant [Elliott] is the prevailing party in this matter, she shall be entitled to reasonable attorney fees in an amount to be determined by the court upon submission of documentation of same.

Clerk's Papers (CP) at 285-88.

On May 19, after Elliott filed proposed findings of fact, conclusions of law, and a proposed judgment, Del Ray filed a "Response to Defendant's Proposed Judgment" and objected to various aspects of the proposed findings and conclusions based on the court's ruling. On May 20, the superior court issued a written supplemental ruling that substantially changed portions of the March 22 ruling.

After determining the correct amount of unpaid rent, storage fees, and late fees due by Elliott through November 2016, the superior court granted judgment in favor of Del Ray. The court ordered that Elliott retain ownership of the mobile home, and because both parties prevailed on some of their claims, the court ordered that all parties were required to pay their own attorney fees and costs. The superior court made a specific finding of fact that the “landlord did not act in good faith.” CP at 328. In the May 20 ruling, the superior court specifically stated,

The parties can consider this a final ruling from which to file the motions to reconsider discussed at today’s presentation, so the CR 59 timelines will commence [on] this date.

CP at 328.

On January 13, 2017, the superior court entered written findings of fact and conclusions of law consistent with its May 20 ruling. The superior court also entered a final judgment in favor of Del Ray. Elliott appeals.

ANALYSIS

I. MODIFICATION OF THE MARCH 22 RULING

Elliott argues that the superior court erred by modifying its March 22 ruling because Del Ray did not file a timely motion for reconsideration under CR 59. Because the superior court’s March 22 letter ruling was not reduced to written findings of fact, conclusions of law, and a final judgment, the superior court did not err by later modifying its ruling.

CR 59(b) states,

A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise.

A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

The superior court's March 22 ruling did not trigger the 10-day deadline to file a motion to reconsider under CR 59. As Division Three of this court has explained,

Washington case law has long considered letter rulings as preliminary or tentative decisions subject to change before a final decision that begins the time for an appeal or motion for reconsideration. Although a court's oral opinion or written memorandum of opinion may be considered in interpreting the court's findings of fact and conclusions of law and amounts to an informal expression of opinion when rendered, the oral or written opinions have no final and binding effect unless formally incorporated into the findings, conclusions and judgment. Even a written memorandum opinion filed prior to the entry of a formal judgment or order does not deprive the trial court of the power to change its indicated ruling.

In re Marriage of Tahat, 182 Wn. App. 655, 672, 334 P.3d 1131 (2014) (citations omitted).

Therefore, a "letter ruling does not commence the 10 day[]" deadline to file a motion to reconsider under CR 59. *Tahat*, 182 Wn. App. at 675.

Here, the superior court's March 22 ruling was a tentative letter ruling that did not trigger the 10-day deadline under CR 59. The superior court's March 22 ruling did not fully resolve all issues and its ruling was subject to additional consideration by the superior court based on the additional briefing and arguments to be presented by the parties. And, if the superior court had intended the March 22 ruling to constitute a final decision for purposes of the 10-day deadline to file a motion to reconsider under CR 59, it clearly could have designated it as such, as it did with its May 20 supplemental ruling. Because the March 22 ruling was a letter ruling and not a final decision, the superior court was free to modify its decision until the entry of formal findings of fact, conclusions of law, and a final judgment. Accordingly, the superior court did not err by modifying its March 22 ruling.

II. GOOD FAITH OBLIGATION

Elliott also argues that, because the superior court found that Del Ray did not act in good faith, the superior court was precluded from entering any judgment in Del Ray's favor. As explained below, the failure to act in good faith bars only the exercise of a right or remedy that requires performance of a condition precedent based on specific statutory provisions for a particular claim. Because Elliott fails to identify a condition precedent to the collection of unpaid rent which Del Ray was required to perform in good faith, RCW 59.20.020 does not bar the superior court from entering judgment in Del Ray's favor for unpaid rent owed by Elliott.

RCW 59.20.020 provides,

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

Elliott argues that this obligation of good faith bars judgment in favor of any party who fails to act in good faith. Elliott relies exclusively on *Ethridge v. Hwang*, 105 Wn. App. 447, 20 P.3d 958 (2001) to support her argument that the failure to act in good faith precludes judgment in a party's favor.

In *Ethridge*, the plaintiff alleged that the defendant, the owner of a mobile home park, unreasonably refused to permit the sale of the plaintiff's mobile home under the MHLTA. 105 Wn. App. at 451-52. The defendant counterclaimed for unpaid rent. *Ethridge*, 105 Wn. App. at 452. A jury found in favor of the plaintiff for the violation of the MHLTA, but found in favor of the defendant on the claim for unpaid rent. *Ethridge*, 105 Wn. App. at 452. On appeal, the defendant argued that the plaintiff's failure to comply with various provisions of the MHLTA barred her claim because she had acted in bad faith. *Ethridge*, 105 Wn. App. at 454. The court

disagreed and held that the failure to comply with the statutory provisions only affects the rights and remedies in those specific provisions. *Ethridge*, 105 Wn. App. at 454. *Ethridge* does not support Elliott's argument that RCW 59.20.020 bars a party from being awarded judgment if the party acts in bad faith. Therefore, we must look to the statute itself to determine if it bars the superior court from entering judgment in Del Ray's favor.

We review questions of statutory interpretation de novo. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). When interpreting a statute, we first look to the statute's plain meaning. *Lake*, 169 Wn.2d at 526. We discern the statute's plain meaning by looking at the ordinary meaning of the language at issue, the context of the statute, and the statutory scheme as a whole. *Lake*, 169 Wn.2d at 526. "If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end." *Lake*, 169 Wn.2d at 526.

The plain language of RCW 59.20.020 specifically imposes an obligation of good faith on any condition precedent that is required to exercise a right or remedy under the MHLTA. Here, Elliott has failed to identify a specific condition precedent to the collection of unpaid rent that Del Ray has failed to perform in good faith. And to the extent that Del Ray acted in bad faith in attempting to collect amounts of unpaid rent that were not actually due, the superior court did not allow Del Ray to collect those amounts. Therefore, the superior court did not err by granting judgment in favor of Del Ray for the amount of unpaid rent actually owed despite its finding that Del Ray did not act in good faith.

ATTORNEY FEES

Elliott also argues that she should be awarded attorney fees for trial. Both Elliott and Del Ray request an award of reasonable attorney fees on appeal. The MHLTA provides that “[i]n any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney’s fees and costs.” RCW 59.20.110.

Elliott argues that she is entitled to an award of reasonable attorney fees at trial because the superior court’s March 22 ruling designated her as the prevailing party. However, as explained above, the superior court did not err by modifying the March 22 ruling. Based on the superior court’s final written findings of fact and conclusions of law, neither Elliott nor Del Ray are the prevailing party because both parties prevailed to some extent (Del Ray prevailed on its claim that Elliott owed unpaid rent, but Elliott prevailed by showing she did not owe the full amount Del Ray claimed).¹ Therefore, Elliott is not entitled to an award of attorney fees at trial.

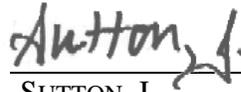
And on appeal, Del Ray is the prevailing party. Therefore, despite the fact that Del Ray does not challenge the superior court’s finding that it acted in bad faith, Del Ray is entitled to an award of reasonable attorney fees on appeal under RCW 59.20.110.

¹ We also note that Elliott does not assign error to any of the superior court’s findings of fact. Unchallenged findings of fact are verities of appeal. *Humphrey Indus., Ltd. v. Clay Street Assocs., LLC*, 176 Wn.2d 662, 675, 295 P.3d 231 (2013).

No. 49969-0-II

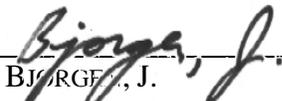
We affirm the superior court's judgment and award Del Ray its reasonable attorney fees on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


SUTTON, J.

We concur:


WORSWICK, P.J.


BJORGE, J.